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	7	Facsimile: (510) 622-2270 Attorneys for Complainant
	8	BEFORE THE
	9	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS
	10	STATE OF CALIFORNIA
	11	In the Matter of the Accusation Against: Case No. 2010 - 283
	12	FREDA CHIEKO STRAUSS
	13	P.O. Box 7 Point Reyes Station, California 94956 ACCUSATION
	14	Registered Nurse License No. 641937
	15	Respondent.
	16	
	17	Complainant alleges:
	18	<u>PARTIES</u>
	19	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
	20	official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
	21	of Consumer Affairs.
	22	2. On or about July 30, 2004, the Board of Registered Nursing issued Registered Nurse
	23	License Number 641937 to Freda Chieko Strauss (Respondent). The Registered Nurse License
	24	was in full force and effect at all times relevant to the charges brought herein and will expire on
	25	September 30, 2011, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

- 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.
 - 6. Section 2761 of the Code states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof...."
- 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- 8. Title 16, California Code of Regulations, section 1444, states, in pertinent part:

 "A conviction or act shall be considered to be substantially related to the qualifications,
 functions or duties of a registered nurse if to a substantial degree it evidences the present or

potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. . . ."

9. Section 2762 of the Code states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
- "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof. . . ."
- 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

11. Oxycodone is a Schedule II controlled substance, as designated by Health and Safety Code section 11055(b)(1)(N), and a dangerous drug pursuant to Business and Professions Code section 4022 in that it can be lawfully dispensed only by prescription.

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FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

- 12. Respondent is subject to disciplinary action under Code sections 2761(f) and 490 in that she was convicted of a crime substantially related to the duties, qualifications, and functions of a registered nurse, as defined in Title 16, California Code of Regulations, section 1444. The circumstances are set forth in paragraph 13, below.
- Superior Court Case No. SC162214 A, Respondent was convicted by a plea of guilty of a violation of Health and Safety Code section 11368, Possession of a Narcotic by a Forged Prescription, a felony. Imposition of sentence was suspended and Respondent was ordered to serve 44 days in the County Jail and placed on supervised probation for a period of three years under terms which included, but were not limited to, the requirement that she register as a narcotics offender pursuant to Health and Safety Code section 11590 and that she not possess any prescription pads or forms except those from a doctor written for herself.

The factual circumstances of said conviction are that from on or about September 2007 through on or about November 6, 2008, Respondent was employed part-time as a surgical nurse for Dr. Kimberly Henry in Greenbrae, California. While employed by Dr. Henry, from on or about and between February 18, 2008 and November 4, 2008, Respondent forged approximately 35 prescriptions in Dr. Henry's name to obtain approximately 2,514 Oxycodone pills which she self-administered. Respondent was never treated by Dr. Henry and Dr. Henry never wrote a prescription for any medication for the Respondent.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Unlawful Obtainment, Possession, and Administration of Controlled Substances)

14. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(a) in that she engaged in unprofessional conduct when she unlawfully obtained, possessed, and self-administered Oxycodone. The circumstances are set forth in paragraph 13, above.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Conviction of a Crime

Involving the Possession of a Controlled Substance)

15. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(c) in that she engaged in unprofessional conduct when she was convicted of a crime involving the possession of Oxycodone. The circumstances are set forth in paragraph 13, above.

DISCIPLINE CONSIDERATIONS

16. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about March 10, 2009, Respondent was admitted into the California Board of Registered Nursing Diversion Program (Diversion Program). As a condition of admission, Respondent agreed to abstain from the use of alcohol and all other mind-altering drugs except those prescribed by a physician, to submit to random body fluid screening tests and cooperate in the collection of such samples, to participate in individual and group therapy, and to discuss any employment opportunities with her case manager in advance of accepting any new positions, among other terms. On or about September 9, 2009, based upon Respondent's failure to register for random body fluid screening tests and failure to disclose non-licensed, non-nursing employment, Respondent was terminated from the Diversion Program for failure to comply with the provisions of the rehabilitation plan and for being a public safety risk.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- Revoking or suspending Registered Nurse License Number 641937, issued to Freda
 Chieko Strauss;
- Ordering Freda Chieko Strauss to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions
 Code section 125.3; and

]	·
1	3. Taking such other and further action as deemed necessary and proper.
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4	DATED: 12/7/09 Souise L. Beriley
5	LOUISE R. BAILEY, M.ED., RAY Interim Executive Officer
6	Board of Registered Nursing Department of Consumer Affairs State of California
7	State of California Complainant
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